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BEFORE THE

ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION
OF SUNZIA TRANSMISSION LLC, IN
CONFORMANCE WITH THE
REQUIREMENTS OF ARIZONA REVISED
STATUTES 40-360, ET SEQ., FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AUTHORIZING THE
SUNZIA SOUTHWEST TRANSMISSION
PROJECT, WHICH INCLUDES THE
CONSTRUCTION OF TWO NEW 500 KV
TRANSMISSION LINES AND
ASSOCIATED FACILITIES
ORIGINATING AT A NEW SUBSTATION
(SUNZIA EAST) IN LINCOLN COUNTY,
NEW MEXICO, AND TERMINATING AT
THE PINAL CENTRAL SUBSTATION IN
PINAL COUNTY, ARIZONA. THE
ARIZONA PORTION OF THE PROJECT IS
LOCATED WITHIN GRAHAM,
GREENLEE, COCHISE, PINAL, AND
PIMA COUNTIES.

ORIGINAL

DOCKET NO. L-00000YY-15-0318-
00171

Case No. 171

**SUNZIA TRANSMISSION LLC'S
RESPONSE TO PROCEDURAL
ORDER**

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Paragraph 31 of the Procedural Order, as amended by the Order Amending the
Procedural Order, presents the following question:

A.A.C. R14-3-208(F) provides that individual parties may appear at the
hearing on their own behalf, whereas all other persons who are parties shall
appear only by a licensed attorney. May a domestic nonprofit corporation
or association authorized by A.R.S. § 40-360.05(A)(3) to become a party
appear, present oral testimony and cross-examine witnesses during the
hearing without being represented by a licensed attorney?

In its Notice of Intent to Become a Party, the Cascabel Working Group cites
Arizona Supreme Court Rule 31(d)(28) for its authority to appoint Mr. Norman Meader
to represent it in the hearing before the Power Plant and Transmission Line Siting
Committee in this matter. It is SunZia Transmission LLC's position that Supreme Court
Rule 31(d)(28) promotes the public interest while providing important safeguards to

1 ensure that lay representation does not interfere with the orderly progress of the
2 proceeding, impose undue burdens on other parties, or cause harm to the party so
3 represented.

4 With respect to the specific question presented regarding A.A.C. R14-3-208(F),
5 the Arizona Corporation Commission adopted A.A.C R14-3-208(F) in 1970. Effective
6 January 1, 2010, the Supreme Court of Arizona amended Rule 31(d) to authorize a public
7 service corporation, an interim operator appointed by the Commission, or a non-profit
8 organization to be represented by a corporate officer, employee, or member who is not an
9 active member of the bar, subject to several conditions. The Supreme Court of Arizona
10 amended the rule in response to a Petition filed by the Arizona Corporation Commission
11 on February 29, 2008. See Exhibit 1.

12 Because A.A.C. R14-3-208 is a Commission-adopted rule and Supreme Court
13 Rule 31(d)(28) was adopted pursuant to the petition filed by the Arizona Corporation
14 Commission, Commission Staff is uniquely situated to address the question presented.
15 Further, SunZia Transmission LLC concurs with the analysis provided by Commission
16 Staff in its September 18, 2015, Response to the question presented in the Procedural
17 Order.

18 RESPECTFULLY SUBMITTED this 22nd day of September, 2015.

19 RYLEY CARLOCK & APPLEWHITE

20 By: 

21 Albert H. Acken

22 Samuel L. Lofland

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27 By:  FOR

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1 ORIGINAL and 25 copies filed
2 this 22nd day of September, 2015, with:

3 Docket Control
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7 COPY of the foregoing was emailed
8 this 22nd day of September, 2015, to:

9 Chairman Thomas Chenal
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12 Transmission Line Siting Committee
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1 And emailed to the following individuals
2 and representatives who have expressed
3 interest in potentially intervening:

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EXHIBIT “1”

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IN THE SUPREME COURT
STATE OF ARIZONA

**In the Matter of PETITION TO
AMEND RULE 31(d) OF THE
RULES OF THE SUPREME COURT
OF ARIZONA**

Supreme Court No. R-08-_____

**PETITION TO AMEND RULE
31(d) OF THE RULES OF THE
SUPREME COURT OF
ARIZONA**

**EXPEDITED
CONSIDERATION
REQUESTED**

or in the alternative

MOTION FOR LATE-FILED PETITION

This petition is brought under Rule 28(G) of the Rules of the Supreme Court. Petitioner seeks the addition of an exemption to Rule 31(d) of the Rules of the Supreme Court. Such exemption would, in matters before the Arizona Corporation Commission (“Commission”) and under certain conditions, allow an individual who is not an active member of the state bar to represent either a public

service corporation, an interim operator appointed by the Commission, or a non-profit organization. The petitioner files this request for expedited consideration or in the alternative, Motion for Late-Filed Petition on behalf of the members of the Commission: Chairman Mike Gleason and Commissioners William A. Mundell, Jeff Hatch-Miller, Kristin K. Mayes and Gary Pierce. The Commission voted to approve the submittal of this Petition in their Open Meeting on February 5, 2008.

I. Background and Purpose of the Proposed New Rule.

The Commission is required by Article 15, Section 3, of the Arizona Constitution to consider the needs of all whose interests are involved, including public service corporations and the consuming public. While the Commission allows for public comment by the interested public, by the Commission's own rule,¹ only evidence presented under oath can be considered in the decision making process. Present procedure allows for intervention by persons or organizations "directly and substantially affected by the proceedings."² Only parties granted intervention are allowed "to introduce evidence, examine and cross-examine witnesses, make arguments, and . . . participate in the conduct of the proceeding."³

Under certain circumstances, public service corporations, pursuant to A.R.S. § 40-243, may be represented by a corporate officer or employee who is not a

¹ R14-3-109(F)

² R14-3-105(A)

³ R14-3-104(A)

member of the state bar. Individuals may represent themselves in Commission proceedings whether or not they may be an attorney. Consistent with the Supreme Court Rules, all other parties are required to seek representation by a member of the state bar.

This proposed exemption addresses instances where parties may have inadequate resources to retain legal counsel. Many public service corporations in Arizona are small operations with income barely sufficient to keep their service going to a small group of customers. The employment of an attorney could far exceed available funds. The Commission frequently finds need to appoint interim operator for the purpose of temporary management of troubled companies. Again, funding for legal counsel is not available. Non-profit organizations representing interested citizen's groups which could be affected by Commission decisions also lack funding for legal counsel. Facts and views which these groups can provide would be of benefit to the Commission's decision making and unless submitted through sworn testimony of a party, cannot be considered.

It has become an increasing concern of the Commission that these economic restraints which prevent retention of legal counsel inhibit procedural due process and hamper the achievement of a true balance between public need and public protection. The Commission's proposed amendment to Rule 31 of the Rules of the Supreme Court would allow these groups participation with limited scope in

Commission proceedings. The Commission's proposed amendment also incorporates a mechanism whereby participation without counsel can be limited if necessary to avoid disruption of the proceedings. In the absence of the Commission's proposed amendment to Rule 31, the public interest will continue to be inhibited by the inability of numerous small but important public groups to adequately present their positions in Commission proceedings.

II. Expedited Consideration

Petitioner submits this request for expedited consideration of the proposed amendment under Rule 18(G) or in the alternative, as a Motion for Late Filed Petition to be acted upon in the annual rules conference in September 2008.

The Commission has increasing concern that the voice of these affected groups cannot be heard. Representation by a person not an active member of the state bar in administrative proceedings is already allowable in many instances with several agencies, both federal and state. Supreme Court Rule 31(G) lists several instances recognized in Arizona. The Courts have recognized that "more people . . . are directly affected by the processes of administrative boards and quasi-judicial tribunals than by adjudications of the courts." *Denver Bar Association v. Public Utilities Commission of the State of Colorado*, 391 P.2d 467, 469 (1964). The Commission believes this exemption is necessary in the protection of the public interest. The Commission currently has pending a number of matters with the

potential to substantially affect the interests of large segments of the community. In addition, the Commission anticipates that several significant proceedings will be commenced in the near future. It is of vital importance that the ability of these groups to present their positions to the Commission effectively be effectuated as soon as possible. In the absence of expedited consideration of this Petition, the Commission's ability to receive pertinent evidence in proceedings will continue to be hampered for a significant period of time. Petitioner believes that expedited consideration of this Petition is necessary to adequately address an ongoing public need.

III. Conclusion

The adoption of the proposed amendment would further promote the protection of the public interest. Thus the Commission respectfully petitions this Court to amend Rule 31(G) of the Rules of the Supreme Court, as set forth in Appendix A.

RESPECTFULLY SUBMITTED this 29th day of February, 2008:

By Christopher C. Kempsey
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Electronic copy filed with the
Clerk of the Supreme Court of
Arizona this 29th day of
February, 2008

by: Dawn A. Wilson

APPENDIX A

DRAFT OF THE PROPOSED AMENDED RULE

Rule 31. Regulation of the Practice of law

[No change in existing text. The following language would be an addition of another exemption.]

(d) Exemptions

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

- (A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,
- (B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and
- (C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

In matters before the Commission where a class of parties is created pursuant to R14-3-104(C), the members of the class or the presiding officer may designate one of the class members who is not an active member of the state bar to be the class representative.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.